

**Office of
The City Attorney
City of San Diego**

**MEMORANDUM
MS 59**

(619) 236-6220

DATE: February 7, 2008

TO: The Honorable Mayor and City Council

FROM: City Attorney

SUBJECT: Referral of Community Development Block Grant - Related Matters to the Committee on Public Safety and Neighborhood Services

On January 29, 2008, the City Council approved various recommendations regarding the City's Community Development Block Grant (CDBG) Program. Specifically, the Council approved several amendments to Council Policy No. 700-02, and directed City staff to, among other things, return to the Budget and Finance Committee, at prescribed times, with the following: (1) reports on the City's Fair Housing Plan and Management Plan; (2) a report on the City's Strategic Plan for the CDBG Program in FY 2010, including a plan for enhancing public participation; and (3) a report on the Redevelopment Agency loan issue.

San Diego Municipal Code section 22.0101.5 ("Permanent Rules of the Council") states in Rule 6.11.4 ("Committee on Public Safety and Neighborhood Services"), in relevant part:

(b) The committee shall have the responsibilities that include...Community Development Block Grants,... .

...

(d) The committee shall have the responsibility to ascertain facts and to make recommendations to the Council concerning that portion of the City's operations pertaining to Public Safety and Neighborhood Services.

Because each of the three directives (referenced above) pertains to the City's use of CDBG funds, and because Rule 6.11.4 specifically states that the responsibilities of the Committee on Public Safety and Neighborhood Services (PS&NS) shall be to ascertain facts and to make recommendations to the City Council concerning the City's CDBG Program, the City Council erred when it directed City staff to return to the Budget and Finance Committee with these CDBG-related matters. Accordingly, we strongly advise that you take the necessary

measures to have these matters properly referred to PS&NS. If you require any assistance in accomplishing this, we would be happy to assist you.

In addition, this Office is very concerned about the legality of certain “ad hoc group” meetings (attended by representatives from three Council District offices, the Office of the Independent Budget Analyst, the City Auditor and Comptroller’s Office, the San Diego Housing Commission, and the Mayor’s policy staff), which have been conducted in private (and which the “ad hoc group” intends to continue conducting in private) to review the history of the City’s management of the CDBG Program, recommendations for future CDBG Program years, and the City’s CDBG Strategic Plan for FY 2010. Under the Ralph M. Brown Act, California Government Code section 54952.2(b) (also known as the “serial meeting prohibition”) states, in relevant part, “[A]ny use of...personal intermediaries,... that is employed by a majority of the members of the legislative body to develop a collective concurrence as to action to be taken on an item by the members of the legislative body is prohibited.”

The participation of the three Councilmember representatives at the “ad hoc group” meetings could readily lead to a Brown Act violation under section 54952.2(b), since the three Councilmember representatives could easily share the information gathered at the “ad hoc group” meetings with other Councilmember representatives not in attendance, thereby developing a “collective concurrence” of a majority of the membership of a Council Committee, or the City Council itself, as to future actions taken by such a legislative body. Because the purpose of the “serial meeting prohibition” is to prevent public bodies from circumventing the requirement for open and public deliberation of issues, we strongly advise that the above-referenced “ad hoc group” be disbanded immediately, and that all future discussions regarding the City’s CDBG Program by any group that includes City Councilmembers (and/or their representatives) occur at PS&NS, which is both open to the public and properly noticed under the Brown Act.

MICHAEL J. AGUIRRE, City Attorney

By _____
Michael D. Neumeyer
Deputy City Attorney

MDN:nda

cc: Scott Kessler, Deputy Director, Economic Development Division
William Vasquez, Director, U.S. Department of Housing and Urban Development, Office
of Community Planning and Development